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115TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 115–538

PROTECTING CONSUMERS' ACCESS TO CREDIT ACT OF 2017

JANUARY 30, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 3299]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3299) to amend the Revised Statutes, the Home Owners' Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced on July 19, 2017 by Representative Patrick McHenry, H.R. 3299, the "Protecting Consumers' Access to Credit Act of 2017" clarifies several laws to ensure that bank loans that are valid as to their maximum rate of interest in accordance with federal law when made shall remain valid with respect to that rate regardless of whether a bank has subsequently sold or assigned the loan to a third party.

BACKGROUND AND NEED FOR LEGISLATION

The 2015 Second Circuit Court of Appeals' opinion in *Madden* v. *Midland Funding, LLC*, (786 F.3d 246 (2015)) held that while the National Bank Act (NBA) allowed a federally chartered bank to

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charge interest under the laws of its home state on loans it makes nationwide, non-banks that bought those loans could not continue to collect that interest because non-banks are generally subject to the limits of the borrower's state. In short, the Second Circuit did not apply the "valid when made" doctrine but instead held that the NBA did not preempt state usury laws because Midland was not a national bank, or a subsidiary or agent of a national bank, but rather was a "third party." In June 2016, the U.S. Supreme Court declined to grant certiorari to review the Second Circuit's decision.

The Second Circuit's decision has caused considerable uncertainty and risk for many types of bank lending programs, including "bank model" marketplace lending where national banks originate loans and then transfer them to nonbank third parties. Being able to offer consistent terms nationwide is vital to scale the marketplace lending business, which in turn allows lenders to access cheaper investment capital and pass along those savings to borrowers. In addition, the *Madden* ruling threatens access to traditional bank credit. Selling debt to non-bank entities in the secondary loan market is a significant part of how banks hedge risk, preserve balance-sheet capacity and maintain liquidity in the loan market. Jeopardizing this common practice of selling debt could force banks to become more restrictive as to whom they offer credit, as well as increase interest rates to compensate for the lost revenue and diminished liquidity.

The *Madden* decision has already created some market uncertainty and has the potential to affect all types of securitized debt or whole loan sales of all types, which impacts access to credit and risk mitigation. In the two years since the *Madden* decision, there is now a lack of uniform interpretation of banking law across the country.

In an October 5, 2017, letter of support for H.R. 3299, the National Federation of Independent Business, National Small Business Association, Small Business Entrepreneurship Council, Innovative Lending Platform Association, Marketplace Lending Association, Financial Innovation Now, Financial Services Roundtable, Independent Community Bankers of America, American Bankers Association, Consumer Bankers Association, Clearing House Association, and U.S. Chamber of Commerce expressed their support for H.R. 3299, stating:

> [H.R. 3299] would provide greater certainty and liquidity in commercial credit markets and thereby have a positive impact on access to credit for both consumers and small businesses.
>
> The Protecting Consumers' Access to Credit Act would codify the "valid-when-made" doctrine, a longstanding legal principle, reaffirmed in 2016 by the U.S. Solicitor General, that if a loan is valid when it is made with respect to its interest rate, then it does not become invalid or unenforceable when assigned to another party. This bedrock common law principle has been a cornerstone of U.S. banking law for over 100 years. It provides critical legal certainty necessary for the effective and efficient functioning of the credit markets, thereby benefiting both individuals and small businesses

> . . . The bill's reaffirmation of the "valid-when-made" principle also could serve to encourage innovative partnerships between banks and financial technology companies that purchase bank loans or interests in securitizations of such loans, further expanding access to credit for U.S. small businesses and consumers.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 3299 on April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on December 12, 2017 and ordered H.R. 435 to be reported favorably by a recorded vote of 42 yeas to 17 nays (Record vote no. FC–116), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 42 yeas to 17 nays (Record vote no. FC–116), a quorum being present.

Present	Representative	Yeas	Nays
	Mr. HENSARLING, *Chairman*	✓	
	Mr. McHENRY	✓	
	Mr. KING	✓	
	Mr. ROYCE	✓	
	Mr. LUCAS	✓	
	Mr. PEARCE	✓	
	Mr. POSEY	✓	
	Mr. LUETKEMEYER	✓	
	Mr. HUIZENGA	✓	
	Mr. DUFFY	✓	
	Mr. STIVERS	✓	
	Mr. HULTGREN	✓	
	Mr. ROSS	✓	
	Mr. PITTENGER	✓	
	Mrs. WAGNER	✓	
	Mr. BARR	✓	
	Mr. ROTHFUS	✓	
	Mr. MESSER		
	Mr. TIPTON	✓	
	Mr. WILLIAMS	✓	
	Mr. POLIQUIN	✓	
	Mrs. LOVE	✓	
	Mr. HILL	✓	
	Mr. EMMER	✓	
	Mr. ZELDIN	✓	
	Mr. TROTT	✓	
	Mr. LOUDERMILK	✓	
	Mr. MOONEY	✓	
	Mr. MACARTHUR	✓	
	Mr. DAVIDSON	✓	
	Mr. BUDD	✓	
	Mr. KUSTOFF	✓	
	Ms. TENNEY	✓	
	Mr. HOLLINGSWORTH	✓	
	Ms. WATERS, *Ranking Member*		✓
	Mrs. MALONEY		✓
	Ms. VELÁZQUEZ		✓
	Mr. SHERMAN		✓
	Mr. MEEKS	✓	
	Mr. CAPUANO		✓
	Mr. CLAY	✓	
	Mr. LYNCH		✓
	Mr. SCOTT	✓	
	Mr. GREEN		✓
	Mr. CLEAVER	✓	
	Ms. MOORE	✓	
	Mr. ELLISON		✓
	Mr. PERLMUTTER	✓	
	Mr. HIMES		✓
	Mr. FOSTER		✓
	Mr. KILDEE		✓
	Mr. DELANEY		✓
	Ms. SINEMA	✓	
	Mrs. BEATTY		✓
	Mr. HECK	✓	
	Mr. VARGAS		✓
	Mr. GOTTHEIMER	✓	
	Mr. GONZALEZ		✓
	Mr. CRIST		✓
	Mr. KIHUEN		✓

Committee on Financial Services

115th Congress

DATE: 11/15/17

Measure HR 3299

Amendment No. MTA

Offered by: _____

Agreed To	Yes	No	Wdrn
	✓		

Voice Vote	Yeas	Nays	Prsnt
	42	17	

Record vote no.	FC- 116

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3299 codifies the legal doctrine of "valid when made," a common-law contractual doctrine that preserves the lawful interest rate on a loan originated by a bank, even if the loan is sold, assigned, or transferred to a non-bank third party.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 11, 2018.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3299, the Protecting Consumers Access to Credit Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3299—Protecting Consumers' Access to Credit Act of 2017

H.R. 3299 would overturn a decision of the Second Circuit Court of appeals and permit nonbank financial institutions to charge interest rates that exceed certain state caps if a bank makes a valid loan and then sells or transfers the loan to a nonbank. The bill would not affect the operations or actions of federal financial regu-

lators. As a result, CBO estimates that enacting H.R. 3299 would have no effect on the federal budget.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 3299 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3299 would preempt state usury laws that set interest rate caps and that regulate the validity of loans sold, assigned, or transferred to a third party. Such loans would retain their maximum rate of interest as set by the loan's originator regardless of whether the loan is sold, assigned, or transferred to a third party located in a different state. That preemption would be a mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the preemption would impose no costs on state governments. Although it would limit the application of state laws, it would impose no duty on states that would result in additional spending.

H.R. 3299 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Rachel Austin (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision

of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 3299 as the Protecting Consumers' Access to Credit Act of 2017.

Section 2. Findings

This section restates the common law doctrine of "valid when made" as found by Congress.

Section 3. Rate of interest after transfer of loan

This section amends Section 5197 of the Revised Statutes (12 U.S.C. 85), Section 4(g) of the Home Owners' Loan Act (12 U.S.C. 1463(g)), Section 205(g) of the Federal Credit Union Act (12 U.S.C. 1785(g)), and Section 27 of the Federal Deposit Insurance Act (12 U.S.C. 1831d) to codify the legal doctrine of "valid when made," which preserves the lawful interest rate on a loan originated by a bank, even if the loan is sold, assigned, or transferred to a non-bank third party.

Section 4. Rule of construction

This section clarifies that nothing in the Act may be construed as limiting the authority or jurisdiction of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, or the National Credit Union Administration.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

REVISED STATUTES OF THE UNITED STATES

* * * * * * *

TITLE LXII—NATIONAL BANKS.

* * * * * * *

CHAPTER THREE—REGULATION OF THE BANKING BUSINESS.

* * * * * * *

SEC. 5197. Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this title. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona-fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight-drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest. *A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.*

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HOME OWNERS' LOAN ACT

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SEC. 4. SUPERVISION OF SAVINGS ASSOCIATIONS.

(a) SAVINGS ASSOCIATIONS.—

(1) EXAMINATION AND SAFE AND SOUND OPERATION.—

(A) FEDERAL SAVINGS ASSOCIATIONS.—The Comptroller shall provide for the examination and safe and sound operation of Federal savings associations.

(B) STATE SAVINGS ASSOCIATIONS.—The Corporation shall provide for the examination and safe and sound operation of State savings associations.

(2) REGULATIONS FOR SAVINGS ASSOCIATIONS.—The Comptroller may prescribe regulations with respect to savings associations, as the Comptroller determines to be appropriate to carry out the purposes of this Act.

(3) SAFE AND SOUND HOUSING CREDIT TO BE ENCOURAGED.—The Comptroller and the Corporation shall exercise all powers granted to the Comptroller and the Corporation under this Act so as to encourage savings associations to provide credit for housing safely and soundly.

(b) ACCOUNTING AND DISCLOSURE.—

(1) IN GENERAL.—The Comptroller shall, by regulation, prescribe uniform accounting and disclosure standards for savings associations, to be used in determining savings associations' compliance with all applicable regulations.

(2) SPECIFIC REQUIREMENTS FOR ACCOUNTING STANDARDS.—Subject to section 5(t), the uniform accounting standards prescribed under paragraph (1) shall—

(A) incorporate generally accepted accounting principles to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies; and

(B) allow for no deviation from full compliance with such standards as are in effect after December 31, 1993.

(3) AUTHORITY TO PRESCRIBE MORE STRINGENT ACCOUNTING STANDARDS.—The Comptroller may at any time prescribe accounting standards more stringent than required under paragraph (2) if the Comptroller determines that the more stringent standards are necessary to ensure the safe and sound operation of savings associations.

(c) STRINGENCY OF STANDARDS.—The regulations of the Comptroller and the policies of the Comptroller and the Corporation governing the safe and sound operation of savings associations, including regulations and policies governing asset classification and appraisals, shall be no less stringent than those established by the Comptroller for national banks.

(d) INVESTMENT OF CERTAIN FUNDS IN ACCOUNTS OF SAVINGS ASSOCIATIONS.—The savings accounts and share accounts of savings associations insured by the Corporation shall be lawful investments and may be accepted as security for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer thereof, and for the funds of all corporations organized under the laws of the United States (subject to any regulatory authority otherwise applicable), regardless of any

limitation of law upon the investment of any such funds or upon the acceptance of security for the investment or deposit of any of such funds.

(e) PARTICIPATION BY SAVINGS ASSOCIATIONS IN LOTTERIES AND RELATED ACTIVITIES.—

(1) PARTICIPATION PROHIBITED.—No savings association may—

(A) deal in lottery tickets;

(B) deal in bets used as a means or substitute for participation in a lottery;

(C) announce, advertise, or publicize the existence of any lottery; or

(D) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(2) USE OF FACILITIES PROHIBITED.—No savings association may permit—

(A) the use of any part of any of its own offices by any person for any purpose forbidden to the institution under paragraph (1); or

(B) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the institution under paragraph (1).

(3) DEFINITIONS.—For purposes of this subsection—

(A) DEAL IN.—The term "deal in" includes making, taking, buying, selling, redeeming, or collecting.

(B) LOTTERY.—The term "lottery" includes any arrangement, other than a savings promotion raffle, under which—

(i) 3 or more persons (hereafter in this subparagraph referred to as the "participants") advance money or credit to another in exchange for the possibility or expectation that 1 or more but not all of the participants (hereafter in this paragraph referred to as the "winners") will receive by reason of those participants' advances more than the amounts those participants have advanced; and

(ii) the identity of the winners is determined by any means which includes—

(I) a random selection;

(II) a game, race, or contest; or

(III) any record or tabulation of the result of 1 or more events in which any participant has no interest except for the bearing that event has on the possibility that the participant may become a winner.

(C) LOTTERY TICKET.—The term "lottery ticket" includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(D) SAVINGS PROMOTION RAFFLE.—The term "savings promotion raffle" means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such

contest being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)).

(4) EXCEPTION FOR STATE LOTTERIES.—Paragraphs (1) and (2) shall not apply with respect to any savings association accepting funds from, or performing any lawful services for, any State operating a lottery, or any officer or employee of such a State who is charged with administering the lottery.

(5) REGULATIONS.—The Comptroller shall prescribe such regulations as may be necessary to provide for enforcement of this subsection and to prevent any evasion of any provision of this subsection.

(f) FEDERALLY RELATED MORTGAGE LOAN DISCLOSURES.—A savings association may not make a federally related mortgage loan to an agent, trustee, nominee, or other person acting in a fiduciary capacity without requiring that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the savings association. At the request of the appropriate Federal banking agency, the savings association shall report to the appropriate Federal banking agency the identity of such person and the nature and amount of the loan.

(g) PREEMPTION OF STATE USURY LAWS.—(1) Notwithstanding any State law, a savings association may charge interest on any extension of credit at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which such savings association is located or at the rate allowed by the laws of the State in which such savings association is located, whichever is greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this subsection, the receiving or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the extension of credit carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking or receiving such interest.

(3) A loan that is valid when made as to its maximum rate of interest in accordance with this subsection shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.

(h) FORM AND MATURITY OF SECURITIES.—No savings association shall—

(1) issue securities which guarantee a definite maturity except with the specific approval of the appropriate Federal banking agency, or

(2) issue any securities the form of which has not been approved by the appropriate Federal banking agency.

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FEDERAL CREDIT UNION ACT

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TITLE II—SHARE INSURANCE

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REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

SEC. 205. (a) INSURANCE LOGO.—

(1) INSURED CREDIT UNIONS.—

(A) IN GENERAL.—Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Board shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.—For each day that an insured credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than $100, which the Board may recover for its use.

(b)(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

(A) merge or consolidate with any noninsured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

(2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mutual form), as those terms are defined in section 3 of the Federal Deposit Insurance Act, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.—A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.—An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

(i) 90 days before the date of the member vote on the conversion;

(ii) 60 days before the date of the member vote on the conversion; and

(iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.—The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF ACT UPON CONVERSION.—Upon completion of a conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this Act.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) IN GENERAL.—No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

(I) director fees; and

(II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) SENIOR MANAGEMENT OFFICIAL.—For purposes of this subparagraph, the term "senior management official" means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 32 (f) of the Federal Deposit Insurance Act).

(G) CONSISTENT RULES.—

(i) IN GENERAL.—Not later than 6 months after the date of enactment of the Credit Union Membership Access Act, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Of-

fice of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) OVERSIGHT OF MEMBER VOTE.—The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;

(3) the economic advisability of the transaction;

(4) the general character and fitness of the credit union's management;

(5) the convenience and needs of the members to be served by the credit union; and

(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) PROHIBITION.—

(1) IN GENERAL.—Except with prior written consent of the Board—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured credit union; or

(ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of title 18, United States Code; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

(i) IN GENERAL.—On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(3) PENALTY.—Whoever knowingly violates paragraph (1) or (2) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(e)(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed $100 for each day of the violation.

(f)(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated

primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the credit union taking or receiving such interest.

(3) A loan that is valid when made as to its maximum rate of interest in accordance with this subsection shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.

(h) Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

(1) an emergency requiring expeditious action exists with respect to such other insured credit union;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i)(1) Notwithstanding any other provision of this Act or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured credit

union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h).

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

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FEDERAL DEPOSIT INSURANCE ACT

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SEC. 27. (a) In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

(b) If the rate prescribed in subsection (a) exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed

rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

(c) A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.

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MINORITY VIEWS

H.R. 3299 attempts to codify the "valid when made" doctrine, which provides that if a loan is valid at its inception, it cannot subsequently become usurious if it is sold or transferred to another person. H.R. 3299 would overturn the Second Circuit Court of Appeals ruling in *Madden v. Midland Funding, LLC,* which declined to uphold the "valid when made" doctrine in the case. However, as drafted, the bill goes further than simply reverting back to the pre-*Madden* landscape and broadly expands the ability of non-banks to preempt state-level usury and consumer protection laws. In other words, the bill makes it easier for nonbanks, such as payday lenders, to use rent-a-bank arrangements to ignore state interest rate caps and make high-rate loans. Additionally, the bill includes no federal usury cap to limit the sweeping preemption of all state interest rate caps.

Although "valid when made" is a longstanding principle, it is a contrived modern doctrine that does not exist universally in state or federal statute or case law. As a consequence, instead of simply overturning the *Madden* decision, H.R. 3299 would codify an expanded preemption power. This is especially disconcerting when non-bank third parties would be able, under the bill, to avail themselves of the privilege to preempt state interest rate laws.

The National Bank Act of 1864 and subsequent laws (including the Dodd Frank Wall Street Reform and Consumer Protection Act) generally authorize the preemption of state banking laws. These preemption powers allow federally chartered banks to only abide by the usury laws of the state listed on their charters. Since the bill makes it clear that the interest rate on any loan that is validly originated by a national bank that is subsequently transferred to a third party, no matter how quickly, is enforceable, H.R. 3299 has the potential to inadvertently incentivize riskier lending. As written, the bill advances a dangerous precedent by allowing third parties that buy debt from national banks to collect on interest rates that would otherwise violate state usury laws.

Proponents of the legislation argue that the status quo is problematic because it compels national banks to comply with a patchwork of state laws instead of oversight by federal banking regulators. However, if national banks are originating loans that they would not otherwise make because they know they will not hold the loans on their books, but instead immediately transfer them to a third party, this argument goes away as banks will have little to no interest in the loan.

This bill would allow bad actors to benefit from our nation's federal bank preemption and encourage unscrupulous lending. For these reasons, we oppose H.R. 3299.

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