

# Islamic finance in the US: Banks are not the solution

Since the creation of the US, the founding fathers — namely George Washington, Thomas Jefferson and the likes, as well as early presidents, such as Abraham Lincoln — have all warned against banking practices and the practice of usury. What they consistently and repeatedly warned against is now known to us as the modern financial system. They cautioned that this system would ultimately destroy the democracy that they worked so hard to establish in the New World. KHALED ELSAYED explores.



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**One of the founding fathers and President John Adams said: "There are only two ways to conquer and enslave a nation. One is by the sword, and the other is by debt."**

Adams equated debt to the sword, and today, citizens of our nation have more debt than at any other time in history. By his definition, we have become an enslaved nation.

The American dream has always been and still is homeownership.

A home is not only a shelter for you and your family. It is one of the only ways for most Americans to create family wealth. For Muslim Americans, the decision to own a home without compromising their faith was not possible using the conventional financial system.

Why did Muslim Americans forsake the conventional financial system?

Muslims were forbidden from participating in the practice of usury (Riba) according to the Quran, just as Christians were forbidden according to the Bible and Jews were forbidden according to the Torah. This is also consistent with what the founding fathers and early presidents warned.

The Abrahamic faiths explained that the practice of usury is an affront and a direct challenge to God Almighty. Through this practice, man seeks to create wealth without introducing any product or service to achieve that wealth. This is tantamount to creating something from nothing — a direct rival to God's divine right to create from nothing.



Before the world labeled the faith-based principles that are promoted by all three monotheistic faiths as Islamic finance, commerce was conducted with the agreed-upon probation of usury for centuries. We have only come to know this form of financing as Islamic finance because over time, bankers, who were known at the time as money lenders, introduced modifications to these divine laws. These modifications were generally accepted by Christians and Jews, but Muslims continued to avoid the participation in, and the practice of, usury.

It is not because the Christian and Jewish faiths changed their scripture to accept the practice of usury. The change was by way of the introduction of a simple, and innocuous word of 'interest' into

financial contracts during the Middle Ages by European monarchs. During that period, these monarchs were in a constant state of war, and war is expensive.

The challenge for them was that they were given the title of 'Holy Roman Emperor' and 'Defender of the [Christian] Faith', and Christianity prohibited the practice of usury. The solution was to change the word 'usury' to the word 'interest' since it is in the 'king's interest' as 'defender of the faith' to wage 'holy wars'. This simple modification ushered in the modern financial system, and today, most people do not recognize that interest and usury are the same thing.

The conventional banking system modified a great deal more to normalize the practice of usury. One such modification allows a bank to inflate a consumer's deposit by 10 times or more using a method called fractional reserve. This method converts a cash deposit of US\$100 into a fictional US\$1,000 and converts it to debt to consumers through credit cards or interest-bearing loans. Moreover, banks are value-neutral, which means they can lend to a variety of business borrowers. These businesses may not share your values and may be engaged in non-permissible practices, such as gambling and liquor.

"Once in debt, interest is your only companion every minute, every day and every night; you cannot shun it or slip away from it; you cannot dismiss it, it yields neither to entreaties, demands, or orders; and whenever you get in its way or cross its course or fail to meet its demands, it crushes you ... Interest never sleeps nor sickens nor dies; it never goes to the hospital, it works on Sunday and holidays, it never takes a vacation, it never visits nor travels, it takes no pleasure ... it is never laid off from work, nor discharged from employment, and it never works on reduced hours," said

JR Clark, a former US undersecretary of state.

As a result, financing a home through a conventional bank means actively enriching a bank and further propagating the practice of usury (Riba) while indirectly supporting ventures prohibited by Islam. This is not ideal for faith-conscious consumers.

With this backdrop, to address this challenge that American Muslims face, a non-bank, Riba-free financing solution has been offered by Guidance Residential, a stand-alone Islamic finance organization in the US.

The program was developed by its independent Shariah board with the engagement of multiple law firms as well as Freddie Mac (a US government-sponsored enterprise)'s executive leadership and legal teams.

This Musharakah program meets five key principles necessary in order to comply with Shariah compliant standards: 1) Rooted in divine law, 2) Economically just, 3) Promotes circulation of wealth, 4) Asset-backed, and 5) Shares in the risk. The Islamic home financing program even established a limited liability company (LLC), which creates a true and legal co-ownership with homeowners under US law.

This great attention to detail and dedication to the introduction of an authentic faith-based program resulted in a declaration by the **Assembly of Muslim Jurists of America (AMJA)** that the Musharakah program is "sound" and "permissible" when a consumer

needs to purchase a home in a manner that is consistent with Islamic finance principles.

AMJA is an independent organization that is comprised of leading US scholars, who have also opined on other Islamic finance programs being offered by US banks, alongside their conventional banking practices through subsidiaries that they have created.

These banks have given their subsidiaries names that allude to Islam in some fashion. For example, University Bancorp named its subsidiary University Islamic Finance (UIF), Devon Bank named its subsidiary Devon Islamic, and Bank of Whittier named its subsidiary LARIBA. These subsidiaries are not independent of the banks, and in fact are an extension of the banks.

According to US Code 12 CFR Sec 5.34(e)(2), banks must have complete control of the subsidiaries' management team and operations of the subsidiary, and no other person or entity has the ability to exercise effective control, or influence over the management or operations of the subsidiary.

AMJA ruled that UIF's and Devon Islamic's contracts are "surrounded by doubts concerning whether the bank truly owns the property". It went on to explain that "this contract also contains some defective, or problematic conditions or aspects of great unfairness". AMJA also pointed out that there were "a number of [other] Shariah violations and invalid conditions, including having two different contracts (sale and lease) at one time, about one item during one time period."

AMJA's conclusion was that consumers should only deal with these two bank contracts in the face of "Dire Need"!

As for Whittier Bank's LARIBA, AMJA ruled that the bank's contract "does not differ from a traditional mortgage that interest-based banks provide. This is the overriding contract between this company and the purchaser and what they present as an Islamic form actually has no existence in reality and has no legal authority in case of dispute".

AMJA's ruling was that "it is not allowed to deal with this company as their model contains clear and explicit interest".

AMJA noted that: "These federal, interest-based institutions put a number of restrictions on them that virtually prevent their contracts from being free of these Islamic violations. These violations differ in intensity from one company to another."

Recently, University Bancorp introduced a Musharakah (co-ownership) model through its subsidiary, UIF. It claims that it is able to achieve this co-ownership without setting up an LLC. But according to US Code Title 12, Chapter 2 which governs the conduct of US banks in the "business of banking", banks are precluded from investing in and owning real property. Simply speaking, they cannot legally become owners or co-owners of real estate properties. This is one of the main reasons they cannot set up an LLC to establish legal ownership in real property as co-owners. ☹️



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