

# Buchalter

## CLIENT ALERT

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*By: [Michael Flynn](#) and [Jason Goldstein](#)*

### **FDIC Issues Proposed Rule Clarifying “Valid-When-Made” Doctrine for State Banks, to Match OCC Proposed Rule for National Banks**

On November 19, the Federal Deposit Insurance Corporation issued a Notice of Proposed Rulemaking (FDIC Notice) setting forth a proposed rule that, if ultimately adopted, would confirm that the “valid-when-made” doctrine applies to loans originated by state banks that are subsequently sold, assigned or otherwise transferred to a third party by stating that they “shall not be affected by any subsequent events, including a change in State law, a change in the relevant commercial paper rate after the loan was made, or the sale, assignment, or other transfer of the loan.” This Proposed Rule aligns with the OCC’s November 18 Proposed Rule, which would clarify that the “valid-when-made” doctrine applies in regard to national bank loans. Links to the FDIC Notice and to Buchalter’s client alert regarding the OCC Notice of Proposed Rulemaking are set forth below.

Like the OCC’s Notice of Proposed Rulemaking, the FDIC Notice indicates that it is not intended to address the “true lender” issue, stating that the Proposed Rule:

[I]s not intended to affect the application of State law in determining whether a State bank or insured branch of a foreign bank is a real party in interest with respect to a loan or has an economic interest in a loan. The FDIC views unfavorably a State bank's partnership with a non-bank entity for the sole purpose of evading a lower interest rate established under the law of the entity's licensing State(s).

Comments on the Proposed Rule are due within 60 days after publication in the Federal Register.

[FDIC Notice](#)

[Buchalter Client Alert regarding OCC Notice](#)

Buchalter is a leading firm representing financial institutions, including in complex commercial transactions and in mortgage lending. For further information on the “valid-when-made” doctrine or to discuss other issues, please contact Mike Flynn or Jason Goldstein, Co-Chairs of Buchalter’s Mortgage Banking Practice Group, at [mflynn@buchalter.com](mailto:mflynn@buchalter.com) or [jgoldstein@buchalter.com](mailto:jgoldstein@buchalter.com).



Michael Flynn is Co-Chair of Buchalter’s Mortgage Banking Group in the Los Angeles office. He can be reached at [MFlynn@buchalter.com](mailto:MFlynn@buchalter.com) or 213.891.5262.



Jason E. Goldstein is a Shareholder and Co-chair of Buchalter’s Mortgage Banking Group. He can be reached at [JGoldstein@buchalter.com](mailto:JGoldstein@buchalter.com) or 949.224.6235

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