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OCC and FDIC "Valid When Made" Rule Reaffirmed: Interest Rate Limitations, or Lack Thereof, on Loans Made By National and State Banks and Federal Savings Associations Remain When the Loan Is Sold or Assigned

By: Michael Flynn

Under the long-recognized valid when made doctrine, if a loan was not subject to a state usury law when it was made, it does not subsequently become even if it is subsequently sold or assigned to another party. The doctrine long was applied by courts and utilized in secondary market sales, but its application to a non-bank purchaser was rejected by the Second Circuit in 2015 in *Madden v. Midland Funding, LLC.*

In 2020, the OCC and FDIC issued their valid when made rules, confirming that the rule applied to loans made by national banks and federal savings associations, as well as state banks pursuant to FDIC authority.

In the latest court challenge, on February 8, the U.S. District Court for the Northern District of California rejected California, Illinois, and New York's challenge to the OCC and FDIC rules. On February 9, OCC Acting Comptroller Michael Hsu reiterating that the OCC's rule remains in place. However, he noted that the OCC is committed to ensuring that the rule is not abused, stating:

> This legal certainty should be used to the benefit of consumers and not be abused. I want to reiterate that predatory lending has no place in the federal banking system. The OCC is committed to strong supervision that expands financial inclusion and ensures banks are not used as a vehicle for "rent-a-charter" arrangements.

For further information, please contact any member of Buchalter's Financial Services Regulatory and Mortgage Banking Practice Groups.

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