

## OCC Promulgates Final Rule on “Valid When Made”

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On June 2, the Office of the Comptroller of the Currency (OCC) promulgated its final rule confirming the longstanding banking principle that a loan that is valid when made is enforceable by any subsequent assignee (the Final Rule). The Final Rule applies to national banks and federal savings banks.

The Final Rule concludes that “when a national bank or savings association sells, assigns, or otherwise transfers a loan, interest permissible before the transfer continues to be permissible after the transfer.” The Final Rule notes that the confirmation of this banking principle was necessary in light of the uncertainty created by the Second Circuit in 2015 with the issuance of its decision in *Madden v. Midland Funding* (786 F.3d 286, 2nd Cir. 2015), which held that a “purchaser of a loan originated by a national bank could not charge interest at the rate permissible for the bank if that rate would be impermissible under the lower usury cap applicable to the purchaser.”

The OCC stated that the promulgation of the Final Rule at this time was necessary to ensure that banks’ ability to serve consumers and businesses would not be hampered at a time “when access to credit is especially critical.” Additionally, the OCC found that the Final Rule promotes safety and soundness considerations, finding that the legal uncertainty created by the *Madden* decision impairs many national banks’ ability to rely on loan transfers as a funding source.

The Final Rule becomes effective on August 3. As of the date of this article, the Federal Deposit Insurance Corporation (the FDIC) has not published a final rule addressing this issue with respect to state chartered banks (the FDIC’s proposed rulemaking on this issue was published on November 19, 2019).

More information is available [here](#).

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