



October 9, 2019

The Honorable Barry Loudermilk
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Loudermilk:

Thank you for your letter dated September 19, 2019, regarding the “valid-when-made” doctrine and the *Madden v. Midland Funding, LLC* case (*Madden*).


In *Madden*, the U.S. Court of Appeals for the Second Circuit recognized that 12 U.S.C. § 85 allows a national bank to charge interest according to the laws of the state where it is located, regardless of where the borrower resides. However, the court also held that a third-party purchaser of a defaulted loan originated by a national bank could not charge interest at the rate permitted for the national bank if that rate was higher than the usury limit that would otherwise be applicable to the third party.

As you noted, the *Madden* decision deviated from the long-established valid-when-made doctrine, which provides that, if the interest-rate term in a bank’s original loan agreement was non-usurious, the loan does not become usurious upon assignment, and so the assignee may lawfully charge interest at the original rate. The valid-when-made doctrine supports commercial needs and fundamental fairness and is consistent with general principles of contract law.

We agree that administrative solutions to mitigate the consequences of the *Madden* decision may be available. As we have stated before, the Office of the Comptroller of the Currency (OCC) believes that the *Madden* case was wrongly decided. We first took this position in a 2016 *amicus* brief filed in the U.S. Supreme Court, in which the OCC and the U.S. Solicitor General stated that the *Madden* decision was incorrect. Just a few weeks ago, we reiterated this view in an *amicus* brief we filed jointly with the FDIC in the U.S. District Court for the District of Colorado in *Rent-Rite Super Kegs West Ltd. v. World Business Lenders, LLC*. We continue to consider all options, including providing regulatory clarity, to provide more certainty to the banks we regulate.

We thank you for your letter on this important issue. If you have any questions, please do not hesitate to contact me or Carrie Moore, Director, Congressional Relations, at (202) 649-6737.

Sincerely,


Joseph M. Otting
Comptroller of the Currency