

Law360 quotes Partner Catherine Brennan in Madden fix article

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On November 22, *Law360* published an article outlining possible fixes by federal banking regulators to the Second Circuit's Madden decision. According to the article, the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corp. (FDIC) proposals call for codifying regulations that state the validity of a national or state bank loan's interest rate "shall not be affected" by the loan's subsequent sale, transfer or assignment, essentially affirming and formalizing the long-held "valid-when-made" doctrine. *Law360* spoke to Hudson Cook Partner Catherine Brennan about these proposed fixes and the likelihood of legal challenges.

"These [proposed rules] go a long way toward establishing that national banks and state-chartered banks, as part of their powers as banks and as part of the business of banking, have the ability to transfer assets and that when they do so, those assets are not somehow converted into nonbank assets," said Catherine. "This would clarify Madden and, if the rules are promulgated, will be the first line of defense from these Madden challenges."

Catherine said she expects consumer advocates will attempt to block the valid-when-made regulations through litigation, perhaps even before the regulations are finalized. "Investors and creditors in this space want to follow the law and do the right thing, so having clarification is a positive development," Brennan said. "I think that people are happy to see this, but you know, they're just going to wait and see how it shakes out."

Catherine assists national and state banks, investment banks, consumer and commercial finance companies, mortgage bankers, installment lenders and other licensed lenders in the development and maintenance of nationwide consumer and commercial lending programs. She engages in credit due diligence on behalf of investors in fintech firms, bank partnership platforms, small business lenders, merchant cash advance companies, consumer finance companies, title loan companies and payday lenders.

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