

Client Alert

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OCC Acting Comptroller Woos Fintech Companies with Remarks on Online Lending

By Ombrea O. Poindexter, Sean Ruff, and Calvin D. Funk

On September 25, 2017, Acting Comptroller of the Currency Keith Noreika discussed online lending and innovation in his keynote remarks prepared for delivery to the Online Lending Policy Summit in Washington, D.C. Consistent with his previous remarks, the Acting Comptroller expressed his support for a regulatory environment that fosters responsible innovation and touted the growth of online and marketplace lending as “the natural evolution of banking itself.”¹

Speaking before online lenders, the Acting Comptroller acknowledged the rapid growth of online and marketplace lending and expressed support for fintech companies being able to choose the best long-term business strategy to meet their goals, without being overburdened by regulations. He noted that fintech companies have taken different paths in recent years, some partnering with banks, some being sold or combined with other businesses, and some seeking to become banks. The Acting Comptroller expressed support for fintech companies being able to pursue whatever path fits their business model and the economic opportunity available to the company. He emphasized that “[t]oo often, regulatory burden and inefficiency limit those decisions, get in your way, and place a drag on your individual and collective economic opportunity.”²

While Acting Comptroller Noreika reaffirmed the authority of the Office of the Comptroller of the Currency (“OCC”) to issue a special purpose national bank charter,³ he did not say the OCC would, in fact, exercise that authority and issue special purpose national bank charters to nondepository fintech companies.

The Acting Comptroller also expressed support for federal legislative action to reaffirm the “valid when made” doctrine, which was called into question by the Second Circuit’s decision in *Madden v. Midland Funding, LLC*.⁴ As a result of *Madden*, there is uncertainty as to whether an interest rate imposed on a loan made by a bank that is valid at the time it is made remains valid after the loan has been transferred. The *Madden* decision has had a significant adverse impact on online “marketplace” lenders, which now face uncertainty as to the validity of loans they purchase from a bank.

In addition, Acting Comptroller Noreika objected to Operation Choke Point and other regulatory actions that may restrict the ability of online lenders and other fintech companies to obtain a bank account or other banking services. While acknowledging that it is the responsibility of individual banks to manage their relationships, and

¹ Keith Noreika, Acting Comptroller of the Currency, Office of the Comptroller of the Currency, Remarks at the Online Lending Policy Summit (Sept. 25, 2017) at 2, <https://www.occ.gov/news-issuances/speeches/2017/pub-speech-2017-110.pdf> (hereinafter, “Remarks”).

² *Id.* at 4.

³ See our [client alert](#) on the Acting Comptroller’s endorsement of “fintech charters.”

⁴ See our [client alert](#) on the *Madden* decision.

Client Alert

assess the risks posed by individual customers, he stated that “[t]he OCC’s policy is not to direct banks to open or close individual accounts, nor to encourage banks to terminate entire categories of accounts without assessing the risks presented by individual customers or the bank’s ability to manage the risk.”⁵

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⁵ Remarks at 9.

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