



# Pillsbury's Washington Weekly Briefing: COVID-19 Developments

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Addressing the ongoing  
federal responses  
to COVID-19

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# Questions? Contact us:

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# Key Recent Policy Developments

## Recent Developments

- Regulations for Main Street Loan Program
- House passage of HEROES Act
- Business community advocacy on liability issues

## Coming Attractions

- House/Senate negotiation on new relief/stimulus bill
- Regulations for Fed lending facility for nonprofit organizations?
- Congressional appropriations process

# Interagency Lending Principles for Offering Responsible Small-Dollar Loans

May 2020 Federal Reserve, FDIC, NCUA and OCC

- Encourage responsible small-dollar loans to customers for both consumer and small business purposes
- Help customers meet needs for credit due to temporary cash-flow imbalances, unexpected expenses, or income shortfalls, including during periods of economic stress, national emergencies, or disaster recoveries
- Responsible small-dollar loan programs:
  - High percentage of customers successfully repaying in accordance with original loan terms,
  - Repayment terms, pricing, and safeguards that minimize adverse customer outcomes, and
  - Repayment outcomes that enhance a borrower's financial capabilities.

# Interagency Lending Principles for Offering Responsible Small-Dollar Loans

Policies and sound risk management practices and controls:

- Structure
- Pricing
- Underwriting
- Marketing and Disclosures
- Servicing and Safeguards

# CFPB No-Action Letter Template for Small-Dollar Lending: NAL Policy

## NAL Policy:

- Revised in 2019 after only one NAL issued since initial publication of policy
- NAL review process focused on the consumer benefits and risks of the applicant's product or service.
- Goal: Provide increased certainty through a statement that the Bureau will not bring a supervisory or enforcement action against a company for providing a product or service under certain facts and circumstances.

## NAL Template:

- Permits entities such as service providers and trade associations to secure a template that can serve as the foundation for NAL applications from companies that provide consumer financial products and services
- Describes general structure and features of product for which NAL is being sought. Including some features that serve as "guardrails" that should be included in all versions of protected product.

# CFPB NAL Template for Small-Dollar Lending: Key Terms

- Precludes supervisory/enforcement actions against depository institutions with more than \$10B in assets on the basis that offering small-dollar loan product is an unfair, deceptive, or abusive act or practice (UDAAP)
- Loan must be for less than \$2,500 and either:
  - Fixed-term, amortizing small-dollar installment loan
  - Open-end line of credit linked to deposit account and with fixed repayment period
- Consumer “guardrails”
  - No balloon payments
  - No rollovers
  - No collateral required
  - No late payment or prepayment fees

# CFPB NAL Template for Small-Dollar Lending: Application Elements

- Underwriting criteria: Consumer transaction activity (*i.e. "cash flow" underwriting*) must be included
- APR range: How would this APR range increase competition in small-dollar lending market
- Reborrowing risk mitigation strategy (*e.g. cooling off periods, borrowing limits, "off-ramps," etc.*)
- Marketing/Disclosures

# OCC Rulemaking: *Madden v. Midland*

- OCC rule to overturn *Madden* by codifying the “valid-when-made” doctrine
  - Federal law establishes that national banks may charge interest at the maximum rate permitted to any state-chartered lending institution in the state where the bank is located
  - Banks are authorized to sell, assign, or otherwise transfer loans
  - This regulation seeks to address uncertainty caused by *Madden* by establishing and by regulation that a bank may transfer a loan without affecting the permissible interest rate
- Rule does not address “true lender” issues

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# Pillsbury's COVID-19 Resources:

If you have questions about how the Coronavirus impacts you or your business, please contact us.

## COVID-19 (Coronavirus) Resource Center:

<https://www.pillsburylaw.com/en/services/covid-19-coronavirus.html>

## Trending Topics:

- [CARES Act \(Stimulus\)](#)
- [Crisis Management](#)
- [Insurance & Contract Disputes](#)
- [Liquidity & Financial Markets](#)
- [Stay-at-Home Orders](#)
- [Workforce & Employment Law](#)

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