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Treasury Calls Upon Federal Banking Regulators to Act

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In its recent report on financial innovation, the U.S. Treasury Department calls upon federal banking regulators to address the uncertainty in lending markets created by the *Madden* case and True Lender developments.

The Report recognizes that "unsecured consumer credit could be diminished because nonbank firms such as marketplace lenders may be discouraged from purchasing and attempting to collect on, sell, or securitize loans made in these states because of the risk of litigation asserting violations of state usury laws" and that the *Madden* decision "could have broader implications well beyond marketplace lenders. Other credit markets that could be affected include bank/loan intermediary partnerships, debt collection activities, loan securitization activities, and simple loan transfers." The Report also describes how True Lender developments have created "market uncertainties that harm the viability of the bank partnership model" which has provided increased access to credit to consumers.

We agree with the Report's recommendation that federal banking regulators should engage in rulemaking to address *Madden* and True Lender developments. Further, we believe that the regulators have the authority to do so under the Federal Deposit Insurance Act and National Bank Act, which gives regulators broad authority to regulate bank lending activities. As Treasury recognizes, Congress could also address these important topics through legislation; however, given the immediate nature of the potential harms to the nationwide lending market and that congressional action does not seem imminent, a regulatory fix may be the best solution. We explore federal regulatory action to address *Madden* and True Lender developments in more detail in a white paper to be published in the coming days.