



# Monthly Telephone BRIEFING

July 17, 2020 – 12:00 – 1:30 p.m.

## FDIC and OCC Respond to *Madden* with Valid-when-made Rules

Last month, the FDIC and OCC responded to the *Madden* decision on interest rates through rulemaking. In *Madden v. Midland Funding*, 786 F.3d 246 (2d Cir. 2015), the Second Circuit held that once a national bank sells all of its interest in a loan, the bank's ability to export its home-state interest rate ceases, making the borrower's home state usury laws applicable. This has impeded the ability of national banks (and by extension, savings associations and state banks) to sell loans when a borrower's state has a more restrictive usury limit than the bank's home state.

The FDIC and OCC issued final rules in June 2020 which attempt to overturn *Madden* by adding the valid-when-made doctrine to their regulations. In simple terms, the valid-when-made rule says that if a loan's interest rate was non-usurious when the bank made the loan, the loan's sale or transfer to a third party does not make it usurious. The OCC's final rule adds the valid-when-made doctrine to its existing interest rate exportation regulations. The FDIC had more work to do and added a new set of interest rate exportation regulations, including a provision to undo the *Madden* decision.

In the July 2020 BCG Telephone Briefing, we will breakdown the OCC and FDIC final rules and explain their impact on national banks and savings associations, and state banks, respectively.

## CFPB Proposes Supplemental Time-barred Debt Disclosures in Regulation F

On March 3, 2020 the Consumer Financial Protection Bureau (CFPB) proposed supplemental regulations under the Fair Debt Collection Practices Act (FDCPA) that would require new disclosures regarding the collection of time-barred debts (TBD). 85 FR 12672. The March 3, 2020 proposal supplemented the CFPB's still pending proposal made on May 21, 2019 to more broadly amend the FDCPA regulations in Regulation F, 12 CFR Part 1006. The March 2020 proposal would require debt collectors to give specific new disclosures when they attempt to collect a time-barred debt (one barred by the statute of limitations). The new TBD disclosures would be required to appear in a debt collector's initial communication with a consumer and in the required debt validation notice, as applicable.

Due to the peculiar way that the federal FDCPA is made applicable by state law to first-party creditors in California, the proposed regulations if ever finalized would likely apply to California banks and credit unions even when collecting their own consumer loans. The July 2020 Monthly Telephone Briefing will include a discussion of the proposed new TBD rules and specifically how they might apply to California financial institutions.



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**A**ldrich & Bonnefin is hosting a Monthly Telephone Briefing for Bankers' Compliance Group® Members on **Friday, July 17, 2020, at 12 Noon**. This meeting will be presented live and will include at least one question and answer session. Members can ask questions by telephone or email. Each member that registers for the Monthly Telephone Briefing will be given a password and instructions on how to call in to the Briefing.

## ORGANIZE YOUR PARTICIPANTS

BCG Main or Registration Contacts are encouraged to organize multiple attendees to participate at one or more locations. All Briefing connections are included in your BCG Membership.

## REGISTRATION

To register, please contact your institution's BCG Main or Registration Contact or, if authorized, log in at <http://register.bankerscompliancegroup.com/subadmin>, and select "Register for Events." Registration closes at noon **two business days** prior to the Briefing date. On the day before the Briefing, registrants will receive an email with call-in instructions and a single-use PIN.

## DOWNLOAD THE HANDOUTS

The Handout(s) are *generally* posted on the BCG Website by noon on the business day before the Briefing. All registrants will receive an email notification when the Handout(s) are posted. To download a Handout, go to [www.bankerscompliancegroup.com/monthly-telephone-briefing.php](http://www.bankerscompliancegroup.com/monthly-telephone-briefing.php) and click on the "Download Handout Here" link at the end of each Handout description.

## CANCELLATION

It is not necessary for registrants to contact BCG if they cannot attend a Briefing and need to cancel their registration.

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