



Monthly Telephone BRIEFING

September 21, 2018 – 12:00 – 1:30 p.m.

CFPB Amends Annual Privacy Notice Requirements Under Regulation P

Congress amended the Gramm-Leach-Bliley Act in 2015 to eliminate the requirement for annual privacy notices for most financial institutions. Any institution whose privacy policies and practices had not changed since the consumer's last privacy notice was no longer required to send annual notices. Even though the GLBA amendments were self-executing, many institutions preferred to wait for Regulation P to be formally amended before they stopped giving annual privacy notices. The wait is over. The Bureau of Consumer Financial Protection has issued final amendments to Regulation P that eliminate the requirement for annual privacy notices for any institution whose information-sharing practices as disclosed have not changed. The final rule will become effective on September 16, 2018. A few details, such as defining what changes do and do not trigger the need to resume giving annual notices, are addressed by the final rule. We will discuss the new exemption and its few conditions in the September Monthly Telephone Briefing.

California Courts Begin to Attack Deposit Fees and Loan Interest Rates

Two recent court cases reveal a disturbing trend toward scrutinizing interest rates and other charges imposed by banks and other financial institutions. Of particular concern is that these charges were of a type normally thought to be exempt under usury laws.

In 2016 a federal district court in San Diego refused to dismiss a lawsuit against Bank of America asserting that the bank's extended overdraft fee constituted usurious interest. *Farrell v. Bank of Am., N.A.*, 224 F. Supp. 3d 1016 (S.D. Cal. 2016). At issue was the bank's \$35 extended overdraft fee for overdrafts that were not satisfied within five days. Bank of America has since entered into a monetary settlement of the case, reported to result in refunds of over \$66 million.

More recently the California Supreme Court has formally opined that interest rates may be attacked as unconscionable on certain short-term consumer loans extended by a California finance lender licensee. *De La Torre v. CashCall, Inc.*, 5 Cal. 5th 966 (Cal. 2018). Under the California Financing Law, loans over \$2600 are exempt from any numerical usury limits. Nonetheless the Supreme Court took the position that the loans' interest rates could be attacked on the theory that they were so high as to be unconscionable under other provisions of the California Financial Code and Civil Code. The loans at issue had interest rates in excess of 90%. The case has been remanded to the trial court to determine whether CashCall's interest rates actually were usurious, with no decision rendered as of this writing.

Both cases reveal a renewed judicial willingness to second-guess the pricing of financial products in California. Whether based on usury or an unconscionability theory, the point is that interest rates and fees may need to be justified before a court of law or even a jury. While banks and credit unions rarely charge interest rates as high as those of short-term "payday" lenders, the recent cases show that any fee or rate is potentially subject to attack and might have to be defended at great cost in a court of law. This Handout and the September 2018 Monthly Telephone Briefing will discuss the holdings of these cases, what they mean to banks and credit unions, and what these lenders can do to protect themselves.



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Aldrich & Bonnefin is hosting a Monthly Telephone Briefing for Bankers' Compliance Group[®] Members on **Friday, September 21, 2018**. This meeting will be presented live and will include a 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 to call in to the Briefing.

ORGANIZE YOUR PARTICIPANTS

BCG Main or Registration Contacts are encouraged to organize multiple attendees to participate at one location or several locations concurrently. In this manner, several attendees can be accommodated in one conference room with a speakerphone. 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 single-use PIN.

CD-Rom: Members can also register to receive a CD-Rom package. This package, which includes any Handouts, is mailed to registrants approximately 2-3 weeks after the Briefing.

DOWNLOAD THE HANDOUTS

The Handouts 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 Handouts are posted. To download a Handout, go to www.bankerscompliancegroup.com/monthly-telephone-briefing.php and click on the "Download Handout Here" link at the end of each Briefing description.

CANCELLATION

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

SIGN UP ANNUALLY

Sign up annually for the 2018 BCG Monthly Telephone Briefings! If you like attending the Briefings, but don't want to register every month, you can have your institution's Registration contact sign you up for the entire year.

MISSED THE BRIEFING?

Should you or others at your institution miss the briefing, you can tune into our streaming audio available on the BCG website one week after the Briefing, at www.bankerscompliancegroup.com/listen-while-you-work.php.